IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3822 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MITHALAL RAMANLAL MODHIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3822 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/07/2001

ORAL JUDGEMENT

Heard Mr.M.M.Tirimizi, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondent Nos.1, 2 and 3 and Ms.P.J.Dawawala, learned Additional Standing Counsel

appearing on behalf of the respondent No.4 - Central Government.

#. In the present petition, the order of detention passed by the District Magistrate, Dahod against the present petitioner has been challenged under Article 226 of the Constitution of India. The order of detention dated 23rd March, 2001 passed by the District Magistrate, Dahod under Section 3[2] of the PBM Act. The grounds of detention are communicated and supplied to the present petitioner under Section 8[1] of the PBM Act. The petitioner detenu has been detained in Jamnagar Jail as Class II detenu. The respondent - District Magistrate, Dahod has filed a detailed affidavit-in-reply. The Union of India has also filed reply so also the State Government has also filed the reply which are taken on record. Learned advocate Mr.Tirmizi, appearing on behalf of the petitioner has submitted that though various contentions have been raised on behalf of the petitioner but only one or two contentions are sufficient to vitiate the order of detention. Learned advocate Mr.Tirmizi for the petitioner has submitted that on page-7 ground-[ff], a specific contention raised by the petitioner that certain documents have not been supplied to the petitioner along with grounds of detention and subsequently though the same was demanded by the petitioner in the representation but despite this, such documents have not been supplied to the petitioner and therefore, documents which are relied upon and referred to by the detaining authority at the time of passing the detention order, have not been communicated and supplied to the petitioner and therefore non communication and non supply of the relevant documents though taken into account while passing the detention order, has adversely affected the right of the present petitioner for making effective representation under Article 22[5] of the Constitution of India. Learned advocate Mr.Tirmizi has submitted that two representation were made to the concerned authority, of which, the first one was addressed to the detaining authority dated 21st May, 2001 and the second addressed to the Secretary, PBM Board on 22nd May, 2001 and third addressed to the Additional Secretary, Government of India dated 24th May, 2001. According to the submission of the learned advocate Mr.Tirmizi, in each representation, the petitioner has demanded certain documents which were relied by the detaining authority and not supplied him certain documents along with grounds of detention. Inspite of the specific demand, the documents were not supplied to the petitioner, therefore, it has also adversely affected the legal right of the petitioner of making an effective

representation as provided under Article 22[5] of the Constitution of India. Mr.Tirmizi, learned advocate for the petitioner has also submitted that co-detenu Dipakkumar Limdiwala against whom the detention order was passed by the very detaining authority. That said co-detenu has challenged the detention order passed against him by preferring Special Civil Application No.3477 / 2001 which has been decided by this Court on 21st June, 2001 and the detention order has been quashed and set aside by this Court. Therefore also, in the present petition which in fact based on identical set of facts, the petitioner is entitled for the same relief from this Court. Learned advocate Mr.Tirmizi has also submitted that looking to the Panchnama at pg.3, 4, and 5, the concerned authority has taken into account all the relevant documents including the documents which were demanded by the petitioner in his representation but despite this, said documents were not supplied to the petitioner.

#. Learned advocate Mr.Tirmizi though relied upon various decisions of the Apex Court in teh case of Lallubhai Jogibhai Patel vs. Union of India and another reported in AIR 1981 SC 728 and in the case of Smt.Shalini Soni Vs. Union of India and others reported in AIR 1981 SC 431. He has also relied upon the decison of this Court in the case of Budhabhai Somabhai Parmar Vs. District Magistrate Kheda and others reported in 1989 [1] GLR 325. However, according to him, the decision in case of MDEHRUNISSA VS. STATE OF MAHARASHTRA reported in 1981 S.C. 1861 is much relevant. Relying upon these thre decisions he submitted that relevant and material documents relied upon by the detaining authority for passing the order of detention against the petitioner have not been supplied to the petitioenr and therefore, the order of detention is required to be quashed and set aside.

#. Learned AGP Mr.H.L.Jani appearing on behalf of the respondents has submitted that the detaining authority has filed a detailed affidavit and the reply which has been given by the detaining authority in respect of the contention raised in para-[f] to the effect that during the course of investigation by the authority, purchase of 1000 liters kerosene from Mr.M.R.Desai vide Bill No. 7460 dated 5-2-2001 has not been seized by the authority. Therefore, Mr.H.L.Jani, learned AGP has submitted that the order passed by the detaining authority is legal and valid. It is also submitted that looking to the material which are on record, the order of detention has been

rightly passed by the detaining authority. Therefore, according to him, in such circumstances, no interference of this Court is required in the present matter.

#. Ms.P.J.Dawawala, learned advocate for respondent No.4 has submitted that the detaining authority has passed the order of detention after considering the relevant facts and materials on record and therefore the order of detention passed against the petitioner is legal and and valid and it does not require any interference by this Court.

#. I have considered the submission of the learned advocates for all the parties and considering the fact that in the present petition on page-6, a contention has been raised by the petitioner that the petitioner has made representations through his advocate on 21st, 22nd and 24th May, 2001 addressed to the concerned authority by registered Post AD. However, said representation have been received by the offices concerned and though it was brought to the notice of the District Magistrate that according to the grounds of detention the detenu has purchased 1000 liters of blue kerosene from one M.R.Desai vide bill No.7460 on 5-2-2001. However, said bill shows that detenu had purchased blue kerosene from M.R.Desai, but the same has not been supplied. It was requested that copy of the above document may be supplied to the detenu forthwith. Even in representations dated 21-5-2001, 22-5-2001 and 24-5-2001, a request has been made to the detaining authority to supply the relevant and material documents, but said documents have not been supplied to the detenu- petitioner. Therefore, it is pertinent to refer the observations made by the Apex Court in the case of Shalini Soni vs. Union of India and other [Supra]. In this case, the Apex Court has observed as under :-

> "`Grounds' in Article 22[5] do not mean mere factual inferences but mean factual inferences plus factual material which led to such fractual inferences. The `grounds' must be self sufficient and self explanatory. Therefore, copies of the documents to which reference is made in the `grounds' must be supplied to the detenu as part of the `grounds'. The failure to communicate the factual material as a part of the `grounds' would amount to non communication of grounds on which the order of detention has been made and thus would infringe Article 22[5]."

In second decision of the Apex Court in the case

of Lallubhai Jogibhai Patel vs. Union of India [Supra], the Apex Court has further observed as under :-

> "Whether the materials not supplied to the detenu were evidently a part of those materials which had influenced the mind of the detaining authority in passing the order of detention and the representation made by the detenu and forwarded to the Central Government at his instance was not disposed of for a long time and the grounds of detention in English language were forwarded to him though he did not know English, continuation of his detention was illegal.
>
> Article 22[5] of the Constitution requires that the grounds of detention must be `communicated' to the detenu. `Communicate' is a strong word. It means that sufficient knowledge of the basic facts constituting the `grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the `grounds' to the detenu is to enable him to make a purposeful and effective representation. If the `grounds' are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands,then that purpose is not served and the constitutional mandate in Article 22[5] is infringed."

In the third decision of the Division Bench of this Court reported in Budhabhbhai Somabhai Parmar vs. District Magistrate [Supra], this Court has observed as under :-

> "It is also clear that the bills are the primary material from which the entries will be posted in the stock register. While distributing the essential commodities, the first document to be prepared would be a bill. Whether the bill books were blank or written or they were written falsely is altogether a different question. Had the copies of the bill books in whatever form they were, been supplied to the detenu, he would have certainly been able to make his representation. In the facts and circumstances of the case, that bill book did form part of the basic facts constituting the offence and the alleged prejudicial activities. Therefore, it has to be included in the term `grounds' which occurs in Article 22[5] of the Constitution of

India and also in Section 8 of the Act."

Since the petitioner detenu has not been supplied with the copies of the bill books which have been referred to and relied upon in the grounds of detention the mandate of Article 22[5] of the Constitution is not complied with. Thus, the petitioner detenu has been deprived of his right to make effective and adequate representation against his detention. Hence, the continuous detention of the petitioner - detenu is illegal and void and hence his further detention is required to be quashed and set aside."

#. I have considered the observations made by the Apex Court in the two cases as well as the observations made by the Division Bench of this Court. Considering the facts in dispute in this petition before this Court it is clear that inspite of demand made by the detenu through his advocate, the relevant and material documents which have been considered and relied upon by the detaining authority for passing the order of detention have not been supplied to the petitioner - detenu and therefore, in such circumstances, non supply of the documents which have been demanded by the detenu has adversely affected the legal right of the petitioner for making effective representation and it also violates the mandate of Article 22[5] of the Constitution of India and therefore, the order of detention is required to be quashed and set aside.

#. It is also necessary to note that the co-detenu of the present petitioner namely Ram Dipakkumar against whom also detention order was passed and the said detention order passed against the co-detenu has also been quashed and set aside by this Court while dealing with Special Civil Application No.3477 / 2001, wherein this has has passed order on 21st June, 2001 setting aside the order of detention and therefore, considering this fact, according to my opinion, the order of detention is required to be quashed and set aside.

#. In the result, the present petition is allowed. The order of detention dated 23rd March, 2001 passed by the District Magistrate, Dahod against the petitioner-detenu - MITHALAL RAMANLAL MODHIA who has been detained in the District Jail Jamnagar as Class-II detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute with no order as to

costs.

Date : 12-7-2001 [H.K.Rathod, J.]

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